

A bill for an act

relating to tobacco; tobacco control and preventing tobacco use; modernizing definitions of tobacco, tobacco products, and tobacco-related devices; modifying promotional and self-service distribution rules; subjecting sale of tobacco-related devices to municipal licensing; prescribing criminal penalties; amending Minnesota Statutes 2008, sections 297F.01, subdivision 19; 325F.77, subdivision 4; 461.12, subdivisions 1, as amended, 2, 3, 4, 5, 6; 461.18, subdivision 1; 609.685, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 609.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CITATION.**

This act may be cited as the Tobacco Modernization and Compliance Act of 2010.

Sec. 2. Minnesota Statutes 2008, section 297F.01, subdivision 19, is amended to read:

Subd. 19. **Tobacco products.** "Tobacco products" means any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, ~~prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking,~~ but does not include cigarettes as defined in this section. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence

product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Sec. 3. Minnesota Statutes 2008, section 325F.77, subdivision 4, is amended to read:

Subd. 4. **Prohibition.** No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products ~~suitable for smoking~~ as defined in section 297F.01, subdivision 19, except that single serving samples of tobacco may be distributed in tobacco stores.

Sec. 4. Minnesota Statutes 2008, section 461.12, subdivision 1, as amended by Laws 2010, chapter 255, section 7, is amended to read:

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco and tobacco-related devices as defined in section 609.685, subdivision 1, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco and tobacco-related devices in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail tobacco sales. The State Agricultural Society shall license and regulate the sale of tobacco on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco are not required to obtain a second license for the same location under the licensing ordinance of the county.

Sec. 5. Minnesota Statutes 2008, section 461.12, subdivision 2, is amended to read:

Subd. 2. **Administrative penalties; licensees.** If a licensee or employee of a licensee sells tobacco or tobacco-related devices to a person under the age of 18 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$75. An administrative penalty of \$200 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Sec. 6. Minnesota Statutes 2008, section 461.12, subdivision 3, is amended to read:

Subd. 3. **Administrative penalty; individuals.** An individual who sells tobacco or tobacco-related devices to a person under the age of 18 years must be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Sec. 7. Minnesota Statutes 2008, section 461.12, subdivision 4, is amended to read:

Subd. 4. **Minors.** The licensing authority shall consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who purchase, possess, and consume tobacco or tobacco-related devices. The licensing authority and the interested persons shall consider a variety of options, including, but not limited to, tobacco free education programs, notice to schools, parents, community service, and other court diversion programs.

Sec. 8. Minnesota Statutes 2008, section 461.12, subdivision 5, is amended to read:

Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold to test compliance with section 609.685. Compliance checks must involve minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco or tobacco-related devices under the direct supervision of a law enforcement officer or an employee of the licensing authority.

Sec. 9. Minnesota Statutes 2008, section 461.12, subdivision 6, is amended to read:

Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco or tobacco-related devices to a person under the age of 18 years in violation of subdivision 2 or 3 that the licensee or individual making the sale relied in good faith upon proof of age as described in section 340A.503, subdivision 6.

Sec. 10. Minnesota Statutes 2008, section 461.18, subdivision 1, is amended to read:

Subdivision 1. **Except in adult-only facilities.** (a) No person shall offer for sale ~~single packages of cigarettes or smokeless tobacco~~ or tobacco-related devices, as defined in section 609.685, subdivision 1, in open displays which are accessible to the public without the intervention of a store employee.

(b) Cartons and other multipack units may be offered and sold through open displays accessible to the public.

(c) Paragraph (b) expires on August 28, 1997.

(d) This subdivision shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related products and ~~which cannot be entered at any time by persons younger than 18 years of age~~ where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

Sec. 11. Minnesota Statutes 2008, section 609.685, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall have the meanings respectively ascribed to them in this section.

(a) "Tobacco" means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco; prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

(b) "Tobacco-related devices" means cigarette papers or pipes for smoking.

Sec. 12. [609.6855] SALE OF NICOTINE DELIVERY PRODUCTS TO CHILDREN.

Subdivision 1. **Penalty to sell.** (a) Whoever sells to a person under the age of 18 years a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by section 609.685, is guilty of a misdemeanor for the first violation.

(b) Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor.

(c) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

5.1 (d) Notwithstanding paragraph (a), a product containing or delivering nicotine or
5.2 lobelia intended for human consumption, or any part of such a product, that is not tobacco
5.3 as defined by section 609.685, may be sold to persons under the age of 18 if the product
5.4 has been approved or otherwise certified for legal sale by the United States Food and Drug
5.5 Administration for tobacco use cessation, harm reduction, or for other medical purposes,
5.6 and is being marketed and sold solely for that approved purpose.

5.7 Subd. 2. **Other offense.** A person under the age of 18 years who purchases or
5.8 attempts to purchase a product containing or delivering nicotine or lobelia intended for
5.9 human consumption, or any part of such a product, that is not tobacco as defined by section
5.10 609.685, and who uses a driver's license, permit, Minnesota identification card, or any
5.11 type of false identification to misrepresent the person's age, is guilty of a misdemeanor.

5.12 Subd. 3. **Petty misdemeanor.** Except as otherwise provided in subdivisions 1 and
5.13 2, whoever is under the age of 18 years and possesses, purchases, or attempts to purchase
5.14 a product containing or delivering nicotine or lobelia intended for human consumption,
5.15 or any part of such a product, that is not tobacco as defined by section 609.685, is guilty
5.16 of a petty misdemeanor.